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1949.

File No. O.C.P.C./49

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Legal **DEPARTMENT**

A **BRANCH**

K.S.R. 11/6

Subject:—

P-5
B

Opinions under the

Code of Civil Procedure, 1908

File No. O.C.P.C./49

Std. Sectt. Slip 24 B e.

103-A

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S.A.K.
23-5
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Office of the R.L.A.

Mr.Wibhandik who is an advocate is expected to gather the position in law for himself; and it is inadvisable for Government in any Department to explain the law for his benefit.

By the Standstill agreement which is entered into by all the Indian States in the Dominion all previous agreements and administrative arrangements have been continued and obviously arrangements about execution of decrees, if they were existing formerly, will continue to be operative in respect of all acceding States, whether or not they have formed themselves into a Union; and the executability or otherwise of the decrees of the Courts of the Indian Dominion in the acceding States and vice versa would depend on the reciprocal arrangements entered into previous to the accession. The States which have been completely merged in this Province do not present any difficulty and as regards other States which are administered by the Provincial Government the position does not also present any difficulty as the Civil Procedure Code has been applied to all these States.

Sd. P.M.Lad
11/1/49.

Remembrancer of Legal Affairs.

U.R.to H.D.,No.412, dated the 13th January 1949.

MRP.
2/6/56.

K.S.R.
6/6

R.I.No.16515,
dated 9-12-48.

x x x x

A. A. S.

As regards section 93 of the Code of the Civil Procedure, the effect of the Privy Council decision in Prem Narain V. Ram Charan (34 Bom.L.R. p.494) is thatx the Collector or other officer appointed must in every case obtain the previous sanction of the Provincial Government before instituting a suit or giving his consent to the institution of a suit under section 92. The draft letter at p.19 is addressed to the Commr. N.D. and is not suitable. The usual practice is to accord sanction by a G.R. "B" may prepare the proper form of sanction.

Id. E.P.B.
29/1

A.L.R.

I think the draft Govt. letter at p.19 ante, will do and it is in order.

Papers may be seen and returned.

Civil Procedure Code.
Section 93.

Id. R.T.K.
31/1

R.L.A.

Id. P.H.L.
31/1.

U.R.to H.& L.G.D.,No.1191,dated 1-2-49.

HRP.
2/6/56.

Office of the R.L.A.

Para.1 of the draft letter at pp.245-247 ante.

Scrutiny of draft letter confirming arrangement between landlord and tenants.

Limitation Act, 1908. Art.182
Civil Procedure Code, 1908 & - Sec.48.

In the present case eviction orders seem to have been passed on 11th December 1946. Ordinarily a decree can be executed within a period of three years (see Article 182 of the Limitation Act) and it can be kept alive for a period of 12 years by making successive applications for execution within a period of 3 years (See sec.48 of the Civil Procedure Code). Consent of the tenants is therefore not necessary for keeping alive the orders till 31-12-1954 provided the landlord is vigilant to keep the orders alive by making applications for execution to the court as stated above. In any case arrangement made between the parties cannot enlarge the time allowed by law for execution of decrees and the court will ignore the private agreement between parties and give effect to the law(See Law of Limitation by Rustomjee, 5th Edn. Vol.II p.1654 and cases noted below). There is no objection to retaining the clause if the landlord insists on retaining it.

2. Para.2 of the draft letter:

A tenant cannot transfer or assign his premises under the Bombay Rents Hotel and Lodging House Rents Control Act, 1947 (see section 15 of the Act). Although strictly speaking it is unnecessary to incorporate this condition in the proposed agreement there is no objection to retaining the same.

3. Para.3 of the draft letter:

If the

If the Municipal Engineers are to satisfy themselves as to the soundness of the chawls after the repairs are carried out this contingency may not arise. However, what is required to be provided in the proposed agreement is that the landlord should be indemnified against the fine, if any, imposed by the Municipality for non-repairs etc. to the chawls. A clause on those lines may be provided in the agreement.

4. Paras. 4 and 5 of the draft letter:

There is no objection to retaining para.4 of the draft letter since the landlord is always free to execute the eviction order for any defaults by the tenants. There is also no legal difficulty in incorporating a claim for costs in court and fine in favour of the landlord.

5. Para.6 of the draft letter: There is no objection to opening a banking account in the name of the landlord on the specific understanding that he will be able to withdraw the amount collected in the bank in case the tenants do not give peaceful and vacant possession of the premises after 31st December 1954. An agreement to this effect executed between the tenants and the landlord will have to be filed with the bank so that the bank may authorise the landlord to operate the account when he obtains a decree for liquidated damages from a Civil Court.

6. It would also be necessary to point out in the

in the letter that the whole arrangement was arrived at at a friendly meeting of the tenants, the landlord and the representatives of Government and that this letter only confirms the said arrangement and that Government is in no way responsible for any breach of these conditions.

Sd. P.M.Lad -
20/6
Remembrancer of Legal Affairs.

U.R.to R.D.(Accommodation) No.6833, dated the 21st June 1949.

MRP.
2/6/56.

Office of the R.L.A.

Jurisdiction of the Civil Court to vacate the order of the Collector setting aside a sale held in execution of a decree transferred to him.

Civil Procedure Code sections 68-70 & Rules framed thereunder.

It would be upto the aggrieved party, if he so desires, to challenge the Civil Court's order by due process of law. The Collector should abide by the order of the Civil Court and leave it to the aggrieved party to seek his own remedy by appeal or in revision if he is dissatisfied.

Sd. P.M.Lad,
3/5
Remembrancer of Legal Affairs.

U. R. to R.D.,No.4886, dated the 4th May 1949.

MRP.
2/6/56.

Office of the R.L.A.

Civil Procedure Code 1908. Appeal against Collector's Order under Section 54.

In cases where the grievance of the parties is that the partition effected by the Collector under section 54 of the Civil Procedure Code is unequal, the party dissatisfied with such partition can have his remedy not through the Civil Court, but on the revenue side i.e. by an appeal or in revision under the Bombay Land Revenue Code (see 12 Bom.371; 42 Bom.689 and R.L.A's opinion No.5283, dated 13th May 1949). The view expressed by the Commissioner, Central Division is not correct.

Sd. P.M.Lad
20/6
Remembrancer of Legal Affairs.

t.to R.D.No.6790, dated 20th June 1949.

MRP.
2/6/56.

9381/dt.20-6-49.

Legal Department.

These papers relate to an applicatio made to the Collector of Ahmedabad by one Maneklal Govindlal Jani and two others both of Ahmedabad praying for a written permission as required by sec.93 of the Civil Procedure Code to file a suit in a representative capacity for the purpose of setting up a schema for the proper administration of the properties settled as charitable trust by late Bhaishanker Nanabhai Bhatt of Ahmedabad. The Collector of Ahmedabad has approached Government for necessary sanction as required by section 93 of the C.P.C. and the pps. have been referred to R.L.A. for advice whether the Collector may be authorised to allow the appellants to file a suit in a representative capacity.

x x x x

MRP.
2/6/56.

Office of the R.L.A.

In the circumstances stated by the District Government Pleader and the Collector, permission to file the suit may be granted to the applicants.

Sd. P.M.Lad
12/7
Remembrancer of Legal Affairs.

U.R.to R.D.,No.7857, dated the 13th July 1949.

MRP.
2/6/56.

Office of the R.L.A.

Priority of Government Dues.

Civil Procedure Code.

Third Schedule Paragraph 9.

Admittedly the propoerty was sold in execution of the decree of the Civil Court and consequently the sale proceeds were required to be sent to the Civil Court under paragraph 9 of the Third Schedule to the Civil Procedure Code; and if any claim in respect of abkari dues was to be made the Collector should have applied to the Civil Court either for rateable distribution or for payment on the ground of priority out of these sale proceeds. The Mamlatdar was not justified in deducting the abkari dues from the sale proceeds. The fact that the property was attached for the recovery of abkari dues before it was auctioned in execution of the Civil Court's decree would give no higher right to Government's claim. Consequently, the view taken by the Civil Judge is substantially correct although his reasoning that by reason of attachment of the property the judgment creditor could be considered a secured creditor is not correct. It would not, therefore, be legally feasible to file a revision application to the High Court.

Sd. P.M.Lad
11/6.
Remembrancer of Legal Affairs.

U.R.to R.D.,No.6502, dated the 13th June 1949.

MRP.
4/6/56.

Office of the R.L.A.

Sections 92 and 93 of the Civil Procedure Code.

In Sajedur Raja Choudhuri v. Gour Mohan Das Baishnav (24 Cal. 418) it was held: "The Collector in giving his consent to the institution of a suit under section 539 (i.e. section 93 C.P.C.) has to exercise his judgment in the matter and see not only whether the persons suing are persons having an interest in the trust, but also (a) whether the trust is a publict trust of the kind contemplated by the section and (b) whether there are prima facie grounds for thinking that there has been a breach of trust." Consequently unless the conditions (a) and (b) are satisfied, no consent can be given under section 93 C.P.C. to the institution of the suit in the present case. From the report of the Collector at p.19 ante it appears that the inquiry made in the present case is not satisfactory. It is stated that "the City Survey Register Extracts and R.R. extracts do not satisfactorily prove that all the property does not belong to the temple." This means that at least some property belongs to the temple and this is borne out by the documentary evidence. Further even Shankargouda, to whose management of the temple property objection is now taken, admits in his statement at p.51 of the file that he is holding some property dedicated to the temple by one Narasava. Consequently, the Collector may be directed to hold a further inquiry and determine the extent of the property of the

temple

temple and whether this property is a trust property for public purposes of a charitable or religious nature, i.e., whether it is a public Hindu temple. The question of granting or withholding consent under section 93 may be considered after the Collector's report on further inquiry is received.

Sd. P.M.Lad,
26/3
Remembrancer of Legal Affairs.

U.R.to R.D.,No.3328, dated the 28th March 1949.

MRP.
4/6/56.

The Collector has reported that the property of the temple is a trust property, that there has been a breach of the trust and therefore agreeing with the District Government Pleader he recommends that permission to file a suit under sections 92 and 93 of the Civil Procedure Code should be granted. The R.D. proposes to authorise the Collector under section 93 to exercise the powers of the Advocate General under Section 92. Papers are shown to R.L.A. before taking action.

Sd. R.M.Mehta
6/7/49.

R.L.A.

Id. P.M.L.
6/7

Office of the R.L.A.

Seen and returned.

Sd. P.M.Lad
Remembrancer of Legal Affairs.

U.R.to R.D.,No.7646,dated 9-7-49.

HRP.
4/6/56.

10236,dt. 7-7-49.

Legal Department.

This is a reference from the Home Department requesting the R.L.A. to advise whether the view taken by that Department that salaries of the employees working in private firms are exempt form attachment under section 60(1)(A) of the Civil Procedure Code or whether it is necessary to amend the section for the purpose.

x x x

Sd.
18/7.

A.L.R.

Seen and returned.

The view taken by H.D. correct (A.I.R. 1939 Sind 134).

Id. R.T.K.
18/7.

R.L.A.

Id. .P.M.L.
18/7.

U.R.to H.D.,No.8187, dated 20-7-49.

MRP.
4/6/56.

Office of the R.L./

The question whether bullock carts of an agriculturist would not be liable to attachment and sale in execution of a decree under clause (b) of the proviso to section 60 of the Code of Civil Procedure is not quite free from doubt. In the case of Udharam v. Rozi Shanbe A.I.R. (1939) Sind p.96, it was held that the term "implements of husbandry" should be interpreted in a fair and reasonable and even generous spirit and not in a narrow and mean manner. Looking to the organization of agriculture in this country, a bullock cart would appear to be an essential implement of husbandry. The fat that bullock carts can be owned even by non-agriculturists would be no ground for saying that they should not be exempted from attachment even when they are owned by agriculturists. However, to put the matter beyond doubt, it would be expedient to amend the law suitably.

Sd. P.M.Lad
10/10
Remembrancer of Legal Affairs.

U.R.to R.D.,No.11379, dated the 12th October 194

HRP.
1/6/56-

L.D.

163, dt. 7-10-49.

Submitted.

2. The R.D. proposes to accord sanction to the exercise of the powers conferred on the Advocate General under section 92, C.P. Code, by the Collector of Nasik in respect of a suit proposed to be filed by Mahadev Gopal Borse and four others in regard to the properties belonging to the "Simpi Vithoba Mandir" at Nasik. Before issue of a G.R. in this behalf (p.7 ante) the papers are shown to the R.L.A.

x x x

Papers may be "seen and returned." A

Sd.T.Y.Chaudhari
27/X

A.S.

Id. R.M.M.
28/10/49

R.L.A. A-to-A.

Id. P.M.L.
14/11.

U.R.to R.D.,No.13005, dated 16-11-49.

MRP.
4/6/56.

The accompanying letter may be seen. If expenses to the Parties could be saved, re transfer to Junior division Courts should some how be arranged.

Id. D.N.D.
30/9

Sec.L.D.

...L.No.205A-1
...ed 30/9/49.

Office of the R.L.A.

Under the law as it obtained in Baroda State before the integration, suits of the pecuniary value of Rs.10,000 were triable by a Civil Judge. That position was continued for the three months Baroda State was administered under the Extra-Provincial Jurisdiction Act, 1947. Under sub-paragraph (11)(a) of paragraph 7 of the Baroda State (Application of Laws) Order, 1949, with effect from 30th July 1949, all original suits and proceedings of a civil nature wherein the subject matter exceeded in amount or value Rs.5,000 pending in any of the Courts of Civil Judges of the Junior Division were deemed to have been transferred to the Courts of the respecting District Judges having jurisdiction over such Courts until the Courts of Civil Judges of the Senior Division were established for the districts in the Baroda State; and such District Judges were also given the power to entertain fresh suits and proceedings of a like nature from 30th July 1949. This was consequential upon the application of the Bombay Civil Courts Act, 1869, to Baroda. In consequence, all suits of the pecuniary value of over Rs.5,000 and below Rs.10,000 come to be transferred to the District Judges. Courts of Civil Judges of Senior Division have been established with effect from 4th October 1949 in the former territory of the Baroda State at five places like Baroda, Mehsana etc.:

see P. & S.D. Notification No.5293/46-I-II dated 14th September 1949. Suits of the kind mentioned above now pending in Baroda Courts thus fall into three classes:

(i) Suits pending before 30th July 1949 which were transferred to the Court of the District Judge.

(ii) suits entertained by the District Judge between 30th July 1949 and 4th October 1949.

(iii) Suits entertained by the Courts of Civil Judges of the Senior Division after 4th October 1949.

Suits falling under the first two categories can be transferred and are expected to be transferred to the Courts of the Civil Judges of the Senior Division under section 24 of the Code of Civil Procedure. Bombay L.A.Bill No.LVIII of 1949, which is now waiting assent, no doubt confers the jurisdiction of entertaing such suits on the Civil Judges of the Junior Division, thus bringing the position in line with that which obtained before integration in Baroda.

2. The question for consideration is whether, taking advantage of this new enactment, it would be feasible to get all the suits described at (i), (ii) and (iii) of paragraph 1 above transferred to the Courts of the Civil Judges of the Junior Division to avoid unnecessary cost and expense to the parties.

3. Clause 6 of the Bill, which was specially inserted at the instance of the High Court, provides that the amendments made in the said Act shall not have any effect in respect of an apply to —

(a) any

(a) any suit or proceeding of a civil nature, wherein the subject matter exceeds in amount or value five thousand rupees but not ten thousand rupees, pending in any Court on the date on which this Act comes into force. Any such suit or proceeding shall be continued and disposed of as if this Act had not been passed; and

(b)(i) any appeal which is filed from an original or appellate decree or order passed in any suit or proceeding wherein the subject matter is of the amount or value specified in clause (a) and which is pending in any Court on the date on which this Act comes into force;

(ii) any appeal which may hereafter be filed from such decree or other passed before the date on which this Act comes into force.

In view of this provision, it would not be legally feasible to transfer any suit out of the three classes mentioned above to the Court of the Civil Judge of the Junior Division exercising the now enlarged jurisdiction. That can be achieved only by undertaking fresh legislation. On principle no distinction can be made between suits in the Baroda territory described at (ii) and (iii) in paragraph 1 above and suits which were already pending in the Court of the Civil Judge of the Senior Division and which have been exempted from the purview of the new enactment. A distinction can however, be made between this latter kind of suits and in the suits which by reason of the Baroda State (Application of Laws) Order, 1949, were transferred from the Courts of the Civil Judges of the Junior Division to the District Court, the point of distinction being that had it not been for the Order, they would have continued in the Court of the Civil Judges of the Junior Division.

In other

In other words, it can be said that L.A.Bill No.LVIII of 1949 merely restores the position which prevailed in Baroda, and that, therefore, the principle of respecting the vested right of trial and appeal upon which clause 6 of the Bill was inserted has in substance no application to the suits which were pending in the Court of the Civil Judge of the Junior Division before 30th July 1949.

If necessary this may be represented to the High Court, although I am doubtful whether the High Court for the sake of a few suits would endorse the proposal of amending the Act so as to exclude them from its scope.

Sd. P.M.Lad,
17/11/49
Remembrancer of Legal Affairs.

H.H.(L)

No.13201,
dt. 21-11-1949.

MRP.
4/6/56.

Office of the R.L.A.

As desired by H.M., I discussed the case with the Hon'ble the Chief Justice with special reference to the proposal of getting the suits transferred under the provisions of section 24 of the Code of Criminal Procedure. The Chief Justice also felt that that course is not free from difficulty inasmuch as power under section 24 can be exercised in this particular group of cases subject to Bombay Act No.LIV of 1949, and since section 6 of that Act makes it obligatory that the pending suits shall be disposed of as if the Act had not been passed, it will not be possible by reference to section 24 to transfer suits which but for the Act could not have been transferred. Moreover, the right of appeal will also be affected. It is the intention of the High Court and also of the Act that the appeal should be to the Court where it would have already lain but for that Act.

2. In these circumstances the Chief Justice suggested that the best course would be to leave things as they are, i.e., to continue the suits where they are now pending, and he also pointed out that the First Class Courts having been provided, the hardship would not be so great, as these Courts could not be very far off from the other taluka places.

Sd. P.M.Lad
8/12/49
Remembrancer of Legal Affairs.

H.M.(Law).

No.215,
dated 9-12-49.

MRP.
4/6/56.